

## STATE OF NORTH CAROLINA

File No.

11 CVS 1923

CATAWBA County

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff

Colette Surratt

Address

City, State, Zip

## VERSUS

## CIVIL SUMMONS

 ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

Name Of Defendant(s)  
Apple Gold, Inc., d.b.a Applebee's Neighborhood Grill  
and Bar

Date Original Summons Issued

+ Date(s) Subsequent Summons(es) Issued

## To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Apple Gold, Inc., d/b/a Applebee's Neighborhood Grill and Bar  
c/o Mr. Robert J. Stolz, Registered Agent  
170 Wind Chime Court  
Raleigh, NC 27615

Name And Address Of Defendant 2

## A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)

Geraldine Sumter  
Ferguson Stein Chambers Gresham & Sumter, P.A.  
741 Kenilworth Avenir, Suite 300  
Charlotte, NC 28204

Date Issued

6-21-11

Time

10:02

 AM PM

Signature

Deputy CSC

Assistant CSC

Clerk Of Superior Court

 ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

 AM PM

Signature

 Deputy CSC Assistant CSC Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason.

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

FILED  
11 JUN 21 AM 10:53  
CATAWBA COUNTY, C.S.C. 11-CvS- 1923  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COLETTE SURRETT,

Plaintiff,

v.

APPLE GOLD, INC., d/b/a Applebee's  
Neighborhood Grill and Bar,

Defendant.

COMPLAINT  
(Jury Trial Demanded)

## I. INTRODUCTION

1. This is an action seeking damages as well as legal, equitable and declaratory relief under the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981, and the common law and public policy of the State of North Carolina. Plaintiff's claims arise from racial discrimination and wrongful termination to which she was subjected while employed by the Defendant.

## II. PARTIES

2. Plaintiff, Colette Surratt ("Plaintiff"), is an African-American, United States citizen and resident of Hickory, Catawba County, North Carolina.

3. Defendant, Apple Gold, Inc., d/b/a Applebee's Neighborhood Grill and Bar ("Defendant"), is a corporation which is incorporated and doing business in North Carolina.

4. Defendant is in the restaurant business and has a facility in Hickory, North Carolina, doing business as Applebee's Neighborhood Grill and Bar.

### **III. FACTS**

5. Plaintiff was employed by Defendant (Hickory facility) on June 17, 1993 as a Prep Cook. Her duties consisted primarily of completing prep work -- set up stations for cooks, maintain product presentations, product quality and cook time standards, preparation of all menu items, plate presentations and specifications.

6. Plaintiff performed her duties as Prep Cook successfully and in such a manner that warranted her promotion to a kitchen manager in 2000. She was also an Apple Elite Team member which she earned by participating in the opening of 12 restaurants in North Carolina.

7. As a kitchen manager, Plaintiff was a key hourly employee and was over the hourly employees in the kitchen.

8. Adam Shoemaker, white male, was hired by Defendant in 2003 as a Waiter. In 2006, he was promoted to a salaried managerial position and became one of Plaintiff's supervisors.

9. After Shoemaker became one of Plaintiff's supervisors (Assistant Manager), she began to experience problems at the workplace.

10. On or about June 24, 2008, Plaintiff interviewed and administered the SQ2 test to an applicant for employment. The SQ2 test is given to assess applicants' strengths and weaknesses. She had interviewed and administered the SQ2 test to applicants several times before without incident.

11. After the test was given, plaintiff gave it to a co-worker, Sue Ruby, for grading. Again, this procedure had been followed on several occasions and was considered to be normal procedure.

12. Shoemaker made an ordeal of the June 24, 2008 procedure followed by Plaintiff and alleged that she should have given the test to him for grading and that she had ignored him during the entire process.

13. Plaintiff believes that she followed the customary procedure in interviewing the applicant and in administering the SQ2 test.

14. Shoemaker recommended Plaintiff's termination on the grounds that she was insubordinate in the handling of the applicant and the test process.

15. Plaintiff's employment was terminated based on Shoemaker's recommendation that she was allegedly insubordinate.

16. Shoemaker further contends that Plaintiff had received prior warnings of insubordination and had specifically received two prior written warnings.

17. Plaintiff believes that her termination had nothing to do with insubordination nor the June 24, 2008 incident but solely because of her race.

18. A white female, Sue Ruby, a key hourly employee, also interviewed applicants and administered the SQ2 test to applicants and she was not terminated.

19. Plaintiff believes that she was held to a different standard because of her race – African-American.

20. As a direct and proximate result of Defendant's actions as described above, Plaintiff has suffered lost wages, economic damages and humiliation.

21. Defendant's actions, as described above, were willful, wanton and intentional and were taken to cause harm to the Plaintiff.

## V. CLAIMS

### First Claim for Relief: Race Discrimination

22. Plaintiff re-alleges and incorporates all preceding paragraphs by reference.
23. By actions described above, the Defendant discriminated against the Plaintiff on the basis of her race in violation of Section 1981. The Defendant discriminated against the Plaintiff on the basis of her race with respect to the terms, conditions and privileges of her employment by terminating her employment. A similarly situated white employee of the Defendant was not treated in the same manner and was allowed to interview applicants and administer and grade the SQ2 test of applicants without incident.
24. Defendant's actions and omissions were in violation of Section 1981 and the common law and policy of the State of North Carolina and were taken willfully, wantonly and with disregard of the Plaintiff's rights, entitling her to compensatory damages in excess of \$10,000.00.

### Second Claim for Relief: Wrongful Discharge (State Law)

25. Plaintiff re-alleges and incorporates all preceding paragraphs by reference.
26. The Defendant's decision to terminate Plaintiff's employment constituted a wrongful discharge under the common law in that it violated the public policy of the State of North Carolina as set out in N.C.G.S. § 143-422.2.
27. The Defendant acted wantonly, willfully, and in disregard of the protected rights of Plaintiff, thus entitling her to an award of compensatory and punitive damages in excess of \$10,000.

## **VI. DAMAGES**

28. As a result of the discrimination claimed herein, Plaintiff has experienced loss of earnings, loss of fringe benefits, loss of retirement benefits, loss of enjoyment of life, mental anguish and distress, and other damages.

29. Plaintiff has been irrevocably injured by the discriminatory actions complained of herein. Plaintiff has no other adequate or complete remedy other than this proceeding to have the actions and practices of the Defendant remedied.

30. The actions of the Defendant as described above, were willful, wanton and purposeful such as to entitle Plaintiff to an award of liquidated and punitive damages.

## **VII. JURY TRIAL DEMANDED**

31. Plaintiff hereby demands a trial by jury.

## **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the discrimination alleged herein be remedied in full and that the Court, after a jury trial:

- 1) Declare the actions complained of herein to be illegal;
- 2) Issue an injunction enjoining the Defendant, its agents, its employees, successors, attorneys and those acting in concert or participation with Defendant and at its direction, from engaging in the unlawful practices set forth herein and any other employment practice shown to be in violation of the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981;
- 3) Award plaintiff compensatory damages, including damages for mental anguish, harm to Plaintiff's economic relations and opportunities, loss of

- earnings with cost of living adjustments, interest, fringe benefits, and retirement benefits;
- 4) Award Plaintiff compensatory damages to which she is entitled for the violation of the public policy and common law of the State of North Carolina;
  - 5) Award Plaintiff punitive damages for the extreme and outrageous acts taken by Defendant in willfully violating state law;
  - 6) Award Plaintiff her costs and expenses in this action, including reasonable attorney's fees, costs and other litigation expenses; and
  - 7) Grant such other and further relief as may be just and necessary to afford complete relief to Plaintiff.

This 20<sup>th</sup> day of June, 2011.



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Geraldine Sumter  
N. C. Bar No. 11107  
FERGUSON STEIN CHAMBERS  
GRESHAM & SUMTER, P.A.  
741 Kenilworth Avenue, Suite 300  
Charlotte, NC 28204  
(704) 375-8461 – Telephone  
(704) 334-5654 – Facsimile  
[gsumter@fergusonstein.com](mailto:gsumter@fergusonstein.com)

Attorney for Plaintiff

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**741 KENILWORTH AVE., STE. 300**

**CHARLOTTE NC 28204-2873**

**DELIVERY TO**

TELEPHONE  
**Mr. Robert J. Stoltz 919-846-2577**

Registered Agent, Apple Gold, Inc., d/b/a Applebee's Neighborhood Grill and Bar

170 Wind Chime Court

Raleigh, NC 27615



